MR. DEPUTY CHAIRMAN: Now, we will take up the Protection of Human Rights (Amendment) Bill, 2005. But, before that, I have an announcement to make. I would like to inform the Members that after the Legislative Business is over, Special Mentions will be taken *up...(Intrruptions)....*

SHRI SANTOSH BAGRODIA: Sir, yesterday, you took one hour for only passing the Bill. Today, you passed it in five minutes. I congratulate you.

STATEMENTS BY MINISTERS

Status of implementation of the recommendations contained in the Seventh Report of the Department-Related Parliamentary Standing Committee on Labour

THE MINISTER OF STATE IN THE MINISTRY OF LABOUR AND EMPLOYMENT (SHRI CHANDRA SEKHAR SAHU): Sir I lay a copy of the statement on the Table of the House.

GOVERNMENT BILLS - *Contd.*

The Protection of Human Rights (Amendment) Bill, 2005

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI SHRIPRAKASH JAISWAL): Mr. Deputy Chairman, Sir, I beg to move that the Bill further to amend the Protection of Human Rights Act, 1993, be taken into consideration.

Sir, the National Human Rights Commission (NHRC) was set up in October, 1993, under the provisions of the Protection of Human Rights Act, 1993, for promotion and protection of human rights in the country. In the light of the experience gained in the administration of the law for nearly five years, the Commission felt that a second hard look was necessary on the structural inadequacies in the law. In May, 1998, the NHRC set up an Advisory Committee under the chairmanship of Justice A.M. Ahamedi, former Chief Justice of India, to assess the need for structural changes and amendments in the Protection of Human Rights Act, 1993. The above Advisory Committee under the chairmanship of Justice Ahmedi, suggested amendments to the Protection of Human Rights Act, 1993. The NHRC then

considered the recommendations of the Advisory Committee and suggested amendments to the Act, to the Government.

The amendments suggested by the NHRC were examined by an Inter-Ministerial Committee, consisting of the Ministry of External Affairs, the Ministry of Defence and the Ministry of Law, keeping in view the scope and ambit of the Act. The Inter-Ministerial Committee made recommendations to the Government for amendments to the Act. The Government considered the recommendations of the Inter-Ministerial Committee and introduced the Protection of Human Rights (Amendment) Bill 2005 in the Rajya Sabha on the 8thof December 2005. This Bill was referred by the Hon. Chairman, Rajya Sabha, to the Department-related Parliamentary Standing Committee of Home Affairs for examination. The Parliamentary Standing Committee after a clause-by-clause consideration of the Bill suggested certain modifications to sharpen the focus of the amendments on the proposed changes so as to make it more effective. The Government, after consideration, has accepted the modifications suggested by the Parliamentary Standing Committee and these are reflected in the List of Official Amendments, which has been submitted to the Chairman of this House for consideration along with the Bill.

The salient features of the proposed Bill are as follows:-

(a) Making eligible Judges of Supreme Court with at least three years of service, to be eligible for appointment as Chairperson of the NHRC, apart from the existing provision of having retired Chief Justices of India eligible for the post of Chairperson. Similarly, it makes eligible a judge of the High Court with at least five years of service, eligible for appointment as Chairperson of a State Human Rights Commission, apart from the existing provision of having a retired Chief Justice of a High Court. This would enable the Selection Committee, to have a wider choice while recommending a suitable person for the post of Chairperson.

(b) The amendment reduces the number of members of a State Human Rights Commission from the present five to three. This will also help in reducing the costs of such Commissions in the States. The Bill also provides that where a State, on financial considerations, is unable to have its own Commission, it can co-opt the Chairperson or member of another State Commission for itself with the approval of the Selection Committee of

the State concerned. This will enable smaller States to have the benefits of a Human Rights Commission.

(c) The proposed amendments enable the NHRC to transfer complaints received by it to the concerned State Human Rights Commission. The NHRC at present receives a large number of complaints, making disposal of such complaints time consuming. The amendment will enable the NHRC to transfer these complaints to the concerned Human Rights Commission of the State concerned for disposal. The NHRC has also been empowered to visit any Jail or other institution without prior intimation to the State Government concerned. This will enable the Commission to make surprise visits to prisons.

(d) Another important amendment relates to enabling the NHRC and the State Human Rights Commissions to make interim recommendations for compensation at any stage of the inquiry and not only after the completion of an inquiry, as is the law at present. This would ensure that victims of human rights violations would be in a position to obtain interim compensation wherever the NHRC or a State Human Rights Commission feels it justified to do so. The amendments also empower the NHRC and its Chairperson to delegate certain powers and functions of the Commission to the Secretary General, except judicial functions and rule making power under clause 18 of the Bill. The amendments also provide separate membership of the Commission for the Chairperson of the National Commission for Scheduled Castes and the Chairperson of the National Commission for Scheduled Tribes, consequent upon separate Commissions coming into existence.

(e) The other amendments to the Bill clarify that the Chairperson of the NHRC and the State Human Rights commissions are distinct from the members of the respective Commissions. The definition of International Covenants has also been modified to enable the Central Government to notify future international covenants and conventions, to which the Act would be applicable.

It is expected that the above proposed amendments to the Protection of Human Rights Act, 1993, as laid down in the Bill before you, would make the National Human Rights Commission and the State Human Rights Commissions more efficient in their functioning and would help in the prevention of human rights violations.

With these words, Sir, I commend this Bill to this august House for consideration and approval.

The question was proposed.

SHRI ARUN JAITLEY (Gujarat): Sir, hon. Minister has proposed a legislation to amend the Protection of Human Rights Act, 1993. The last 13 years, in the field of human rights, have been a very challenging moment for this country. Challenging, because we have a history of having adopted a liberal Constitutional order, where in the liberal Constitutional order we ensured a guarantee for human rights in the shape of various provisions that we incorporated in our Constitution. Any Indian would be proud of that fact that, as the Indian democracy progressed further, by an interpretative process and by the maturity of the Indian society, some of the rights got further strengthened and an additional protection and guarantee came to our citizens. We have, of course, also had dark periods of Indian history when human rights and personal liberties were suspended. But then, we would like to always mention that these were aberrations in the history of a country where we always attempted to strengthen democracy.

Sir, the last 50 odd years were challenging from another point of view. Even before the eighties, when we were trying to strengthen our institution of human rights, we were faced with terrorism in various parts of the country. Initially it appeared to be confined to Punjab and then down south. In two areas we have been substantially able to make a great headway in terms of success and these were success stories of fighting terrorism. We still have problems in areas of North-East, the problem of cross-border terrorism, and we also have now the whole problem of a Maoist corridor in the country. When these two conflicting situations arise, the challenge for a mature society increases. On the one hand, there is a commitment for a democratic society to strengthen various forms of human rights and, on the other, an exasperated society will ask itself a question: How do we face this challenge which is emerging out of terrorism? A large part of that crisis, at times, even convinces the people that we do need harsher methods within a society to deal with the problem of terrorism. That is why I say that in the last 13 years, after the legislation was originally passed and after the NHRC and the State Human Rights Commissions were established, on the one hand, we have been living with this dichotomy of a desire to protect human rights and strengthen them and, at the same time, on the other, within a Constitutional order, to fight those who fight with extraordinary methods and who are bent upon destroying a democratic

order in the society. Our experience of facing this challenge has been a mixed one. But, yet, as we are emerging and maturing as a society, which is trying to live with both these contradictions, I have not the least doubt that, with the kind of resilience that the Indian Society has, perhaps, we will also be able to find some kind of a convergence between two diametrically opposite challenges that we face.

Sir, the experience of having established these Commissions has been against us in the backdrop of a lot of adverse propaganda which was carried on by our neighbour, particularly, on what our human rights record is. Now, ironically enough, those who questioned our human rights record were not democracies, nor did they have glorious history of having supported many a democracy in the world. Since this opinion was building up, it was the maturity of our society that we decided to create these institutions which will be an institutional mechanism at the level of the Central Government and also at the level of the State Governments which can make sure that violations of human rights do not take place which can also carry on an advocacy function that even when we live with challenges we can continue to strengthen a large part of these institutions itself. The experience, by and large, has been reasonable. But this is an experience which we will try to make sure that it improves further. It is in this background that the Minister and the Government have considered it necessary to suggest certain amendments to the Bill. The Minister in his opening statement, just now, mentioned that before this Bill came into force, an Expert Committee was constituted; the National Human Rights Commission was consulted; thereafter, the Government considered it; the matter went to the Standing Committee and finally, the wisdom of all has produced these amendments, which in any dynamic society may be necessary after 13 years of experience. I have, Sir, no conflict with the basic tenor of what the Minister has said. It is the practical wisdom of any society which after larger consultations wants to improve every institutional mecnanism. But I have three doubts in my mind with regard to the amendments which have been proposed. I have also separately suggested some amendments to the Minister's draft to this effect. My first doubt is in relation to the amendment which is proposed by clause 3 in section 3 of the principal Act. The original Act envisages that the National Human Rights Commission shall be headed by a former Chief Justice of India. The National Human Rights Commission has a tenure of five years. Now this experience between 1993 and till today of having the senior most former judge of the country heading the Tribunal of this kind has lent credibility to

this institution and it is not that former Chief Justices of India have been unwilling to take up this job or that former Chief Justices of India, when a selection is proposed of a new Chairman, are not available. We have had three chairpersons till now and all three chairpersons have been eminent former Chief Justices of India and each one of them in his own way has .lent credibility to the functioning of the Commission. Even this time, I can count offhand that when the tenure of the present Chairman comes to an end, there will be a galaxy of former Chief Justices who will be available of whom the collegium can decide to appoint anyone of them. The tenure of the Commission is five years and except once we never have a history of having a Chief Justice of India who served his tenure for more than five years. Therefore, during the period of five years, a lot of Chief Justices retire and every time a selection is made either three former Chief Justices are available or five are available, as would happen by the end of the year when the post falls vacant. We have a large number of former Chief Justices available of whom the collegium in its wisdom can decide to select one of them. What then is the compelling necessity to bring about a change that instead of a former Chief Justice of India, the Commission can now be headed by a person who has been a judge of the Supreme Court with three years experience? A judge of a High Court and a Chief Justice of a High Court retire at the age of 62 and a judge of the Supreme Court and a Chief Justice of the Supreme Court retire at the age of 65. Every person who has been a judge of the Supreme Court, will necessarily have three years experience. So the amendment, in effect, means that instead of the NHRC being headed by a former Chief Justice of India, it will now be headed by any person who has been a judge of the Supreme Court. He may even be the junior most judge of the Supreme Court. I am unable to understand as to what is the compelling necessity to downgrade the stature of the Commission. Instead of the Commission being headed by a former Chief Justice of India, which adds weight to the stature of the Commission; its reports get international recognition; its reports and functioning are looked with an element of credibility, suddenly you bring an amendment and say that it need not be the former Chief Justice of India, it can, in effect, be any person who has been a judge of the Supreme Court.

Now, such an amendment is normally brought in a situation where you may actually find that in the five years period, you don't have enough people to choose from. But that is not the case here because normally a Judge of the Supreme Court may be a Chief Justice for six months, one year or one-and-a-half years, and during the period of five years, you may

have three or four eligible candidates available. What then is the compelling necessity that the Government has decided to downgrade the NHRC, that it will no longer be headed by a former Chief Justice of India, that simply a Judge of the Supreme Court will head it? I suspect that - I hope that this is not the case - and I ask this: Is it because that we have somebody in mind whom we want to appoint, and this somebody may not have been a former Chief Justice of India? Sir, may I say that there is a lot of difference between appointing a former Chief Justice. and appointing a Judge? Normally a former Chief Justice would be a person who has at least had, between the High Court and the Supreme "Court tenure, a judicial experience of more than two decades. He has headed the highest Court of the world's largest democracy. His seniority, his experience, his stature, his vision, his experience in balancing the need of the society which is, on the one hand, wanting to strengthen human rights and democracy, on the other hand, is fighting terrorism and, on the third, faces problems of serious law and order from mafias, etc. So, in balancing this, a great amount of maturity is required. Now, amongst the various amendments, which you have proposed, I don't see any reason why this amendment should be slipped in. And the effect of this amendment is going to be with the Government of the day, who has a major say in the appointment of the Chairperson of the NHRC, who will then, in future, start looking into the entire range of people available and start selecting the person who will be more comfortable from the Government's point of view. In the case of a former Chief Justice, your choice is restricted to the most experienced people. But if you start selecting any person below the age of 70 years, who has been a judge of the Supreme Court, the Government's eye -- that may be any Government's eye - will first fall upon a person with whom it has a lot more comfort level. And once this becomes a criterion after this amendment, the value and the credibility of the report of the NHRC are going to go down. So I would seriously urge upon the hon. Minister to seriously reconsider this part of the amendment which, in my view, is downgrading the stature of the NHRC itself.

The second amendment is almost an identical amendment -- I won't repeat the points - which is in clause 12 of this Bill. This seeks to amend Section 21 of the Principal Act. At the State level also, a Chief Justice of a Supreme Court was normally required. Now, instead of a Chief Justice, you will have a Chairperson who has been a Chief Justice or a Judge of a High Court for five years. The persons are normally not elevated as a Judge of the High Court because District Judges also retire at the age

of 58 years; good lawyers are being elevated as judges in their early 40s or mid-40s or in their late 40s. They all have 10-15 years of experience. So, you are now appointing the State-level chairmanship with almost an eligibility condition that the least experienced man can also be appointed. Now I am asking myself: What is the compelling necessity to downgrade the stature of the NHRC and the State level Commissions? The Governments of the day at times find reports which do not suit them. But that is what the whole system of human rights is all about. The NHRC's job is to really protect human rights. We may find some of their reports not happy when we are in the Government. But then we can't keep that as a motivation for destroying the NHRC with an amendment of this kind. In the long run, these bodies have served a larger purpose. They have had, even in a crisis situation, a stabilising effect. Their word has been listened to with a lot of seriousness. And, therefore, I would urge the hon. Minister to seriously consider these two amendments because the effect of this is going to be it is going to enable the Central and State Governments to choose chairmen of their choice. And, when Government-friendly chairmen are appointed, I think, that is the end of a body of this kind.

The third, Sir, is an amendment by clause 8 which the hon. Minister has proposed to section 10 of the principal Act. Now, the NHRC can receive complaints from any person. The NHRC can receive complaints which are referred to it by the Supreme Court or the High Courts. Now, I think, you are expanding the scope a bit too much by now including a phrase that any magisterial court in the country can now start referring complaints to the National Human Rights Commission. There has to be some mechanism by which the complaints can be referred, either the State human rights body or others, but, it every magistrate in the country is going to be empowered to refer complaints to the NHRC, then, the backlog of complaints before the NHRC would never be adjudicated. You have to place matters of eminent importance before the NHRC. Other matters have to go to the States. Therefore, when you allow some thousands of magistrates all over the country to start referring complaints in every second case to the NHRC, you are going to load the NHRC with business, which the NHRC will not be able to discharge. And, some of these complaints may be of a nature which may be important at the local level, but may not be big enough to merit the time and attention of the NHRC. Maybe they require, either the State Committee or some bodies that the State Committees set up, their intervention at that particular stage. So, I would, therefore, while conceding, Sir, that the larger amendments to this Bill are a part of the

consulution process which has taken place, I am not so sure that effective consultation has taken place in relation to these three points that I have raised.

Sir, recently in July, the Chairpersons of all State Human Rights Commissions had a meeting. And,- all of them have unanimously now decided and resolved that these three points which I am raising are really matters which the Government and the Parliament must reconsider because it serves nobody's purpose, it is not an adversarial issue that we downgrade the stature of the State-level Commissions and the National Human Rights Commission. There is no compelling necessity; there is no provocation for the Government to do that. Therefore, while lending our support to these amendments, I would urge the hon. Minister to seriously reconsider these three points. If necessary, the Bill can be held-over, subject to what other colleagues in the House have to say, and these three corrections can be made after a consensus that really comes about. Thank you very much, Sir.

MR. DEPUTY CHAIRMAN: Now, there are statements by the Ministers. Shri Pranab Mukherjee.

THE MINISTER OF DEFENCE (SHRI PRANAB MUKHERJEE): Sir, with your permission, I want to make a statement on the implementation of the recommendations contained in the Sixth and Seventh Report of the Standing Committee on Defence during the 14th Lok Sabha.

Sir, I am making the statement on the status of implementation of recommendations.. *(Interruptions)...*

MR. DEPUTY CHAIRMAN: You can lay it on the Table of the House.

STATEMENTS BY MINISTERS *-Contd.*

Status of implementation of the recommendations contained in the Sixth and Seventh Reports of the Department-Related Parliamentary Standing Committee on Defence

SHRI PRANAB MUKHERJEE: Sir, with your permission, I lay on the Table of the House a copy of the Statement regarding the sratus of implementation of the recommendations contained in the Sixth and Seventh Reports of the Department-Related Parliamentary Standing Committee on Defence.